

REMARKS

Status of the Claims

Claims 1–27 and 29–45 remain pending in the application, Claim 28 having been canceled, Claims 29–31 having been amended to refer to Claim 27 instead of canceled Claim 28, and Claims 1, 27, 32, and 43 having been amended to more clearly define the present invention.

Claims Rejected under 35 U.S.C. § 102(b)

The Examiner has rejected Claims 1, 8, 9, 11, 12, 14-17, 32, and 38-45 as being anticipated by Kopelman et al. (U.S. Patent No. 5,627,922 hereinafter “Kopelman”). The Examiner asserts that Kopelman describes each element of applicants’ claimed invention. Applicants have amended independent Claims 1, 32, and 43 to more clearly define the invention, as further discussed below. In the interest of reducing the complexity of the issues for the Examiner to consider in this response, the following discussion focuses on amended independent Claims 1, 32, and 43. The patentability of each remaining dependent claim is not necessarily separately addressed in detail. However, applicants’ decision not to discuss the differences between the cited art and each currently rejected dependent claim should not be considered as an admission that applicants concur with the Examiner’s conclusion that these dependent claims are not patentable over the cited reference(s). Similarly, applicants’ decision not to discuss differences between the prior art and every claim element, or every comment made by the Examiner, should not be considered as an admission that applicants concur with the Examiner’s interpretation and assertions regarding those claims. Indeed, applicants believe that all of the dependent claims patentably distinguish over the references cited. However, a specific traverse of the rejection of each dependent claim is not required, since dependent claims are patentable for at least the same reasons as the independent claims from which the dependent claims ultimately depend.

With regard to amended independent Claims 1, 32, and 43, applicants have clarified how the distal tip is driven in a periodic scanning motion to more clearly distinguish over Kopelman. Applicants' scanning actuator drives the waveguide to *vibrate* the distal tip in a desired scanning motion (see applicants' specification, page 7, lines 28-33). In contrast, Kopelman (see FIGURES 1-9 of the reference) teaches a scanner that only *positions* or *translates* the micro-sensor tip of an optical fiber in one of three orthogonal directions (see Kopelman, column 3, lines 16-19). Since positioning or translating the distal tip is not equivalent to vibrating or resonating the distal tip, Kopelman does not teach or suggest this aspect of amended independent Claims 1, 32, and 43.

1 In rejecting Claim 27, the Examiner asserts that it is anticipated by Clark et al. (U.S. Patent
2 No. 4,804,395 hereinafter “Clark”). However, Clark does not teach or suggest applying any force to
3 shape the melted portion of the optical fiber to form a lens. The Examiner has acknowledged this
4 difference by objecting to dependent Claim 28, which recites this aspect of applicants’ invention.
5 Taking the Examiner’s suggestion, dependent Claim 28 has been cancelled, and its recitation has
6 been moved into Claim 27. As amended, Claim 27 is clearly patentable.

7 Accordingly, the rejection of independent Claims 1, 32, and 43 under 35 USC § 102(b) over
8 Kopelman, and independent Claim 27 under USC § 102(b) over Clark should be withdrawn for the
9 reasons given above. Because dependent claims are considered to include all of the elements of the
10 independent claims from which the dependent claims ultimately depend, and because Kopelman does
11 not disclose or suggest all the elements of independent Claims 1, 32, and 43, the rejection of
12 dependent Claims 8, 9,11, 12, 14-17, 38-42, and 44-45 over Kopelman should be withdrawn for at
13 least the same reasons as the rejection of Claims 1, 32, and 43.

14 Claims Objected To

15 The Examiner has objected to Claims 2-7, 10, 13, 18, 28-31, and 33-37 as being dependent
16 upon a rejected base claim, but would be allowable if rewritten in independent form including all of
17 the limitations of the base claim and any intervening claims. At this time, applicants elect not to take
18 any such action in regard to all but Claim 28, the recitation of which has now been included in
19 independent Claim 27. As amended, it is apparent that the other independent claims are patentable
20 over the cited art.

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In view of the Amendment and the Remarks set forth above, it will be apparent that all claims in the application define a novel and nonobvious invention. Accordingly, this application should be passed to issue without further delay. Should any questions remain, the Examiner is asked to telephone applicants' attorney at the number listed below.

Respectfully submitted,

Ron Anderson

Ronald M. Anderson
Registration No. 28,829

RMA/SKM:klp

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 2, 2004.

Date: March 2, 2004

50, on March 2, 2004.